Southern California Gas Company *and* Utility Workers Union of America, Local 483. Case 31–CA–25539

July 29, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

The question presented in this case is whether the Southern California Gas Company (the Respondent) violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide Utility Workers Union of America, Local 483 (the Union) with certain requested information.[1] For the reasons set forth below, we find that the Respondent did not unlawfully fail and refuse to provide the Union with the requested information. Contrary to the dissent, the stipulated record plainly shows that the requested information was not relevant or necessary for purposes of collective bargaining, but was sought for an entirely different reason. Accordingly, we find that the Respondent was under no duty to provide the Union with the requested information.

On the entire record in this case, the Board makes the following findings.[2]

I. JURISDICTION

The Respondent is a California corporation engaged in generating and distributing natural gas, with offices and places of business in various cities in California, including, but not limited to, Los Angeles, Bakersfield, Delano, Fontana, Glendale, and San Luis Obispo (jointly, the "Facilities"). During the 12 months preceding the parties' execution of the stipulation of the facts, the Respondent, in the course and conduct of its operations, purchased and received goods in the State of California at the Facilities valued in excess of $50,000 directly from points outside the State of California. During the same time period, the Respondent derived gross revenues in excess of $500,000. The parties have stipulated, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

A. Facts

At all times material, the Union has been the recognized exclusive representative of a bargaining unit of the Respondent's employees.[3] Such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which covers the period of April 1, 2002 through March 31, 2005.

The parties stipulated that by letter dated February 9, 2001,[4] the Union informed Bret Lane, the Respondent's director of labor relations, that it was "investigating a class action grievance about work not being performed throughout Transmission and Storage that can impact employee safety." The Union requested the following information from the Respondent: (1) the most recent "Overdue Report" and "Backlog Report" for all work units in Transmission and Storage; and (2) a list or copies of all Maximo orders[5] that have been closed, deleted, and/or removed from the Maximo Backlog without all the work having been completed by represented employees. The Respondent, by letter dated February 23, requested that the Union provide it with the "specific employee safety concerns as they relate to [the requested] reports." In a series of exchanges spanning some 4

[1] The Charging Party filed an unfair labor practice charge on March 11, 2002. On May 31, 2002, the Regional Director for Region 31, acting on behalf of the General Counsel, issued a complaint alleging that Respondent violated Sec. 8(a)(5) and (1) of the National Labor Relations Act.

On August 26, 2002, the General Counsel, the Respondent, and the Charging Party filed with the Board a stipulation of facts, with attachments, and moved to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and a Decision and Order. On February 11, 2003, the Board issued an order granting the motion to transfer and approving the stipulation of facts. Thereafter, the General Counsel and the Respondent filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent filed a motion to correct misstatement of the stipulated record. The General Counsel filed a response. Although styled as a motion to correct a misstatement of the record, the Respondent is actually seeking to strike portions of the General Counsel's brief that contain factual assertions not supported by the record. Specifically, the Respondent objects to the General Counsel's representation that the Respondent told the Union that certain work orders were deleted and could not be retrieved from the computer. The Respondent contends that nothing in the record indicates that the Respondent told the Union that the work orders were deleted. We agree with the Respondent and, therefore, strike these portions of the General Counsel's brief in question.

[3] The Union represents the employees in the following appropriate unit: All production, maintenance and clerical employees employed in the gas transmission divisions of Respondent, including the Spence Street Headquarters, excluding the employees in Voting Group A and all professional employees, confidential employees, watchmen, guards and supervisors as defined under the Act.

[4] Hereinafter all dates are in 2001 unless otherwise noted.

[5] According to the March 11, 2002 charge filed by the Union, "Maximo" is a work order tracking system.

months, the Union continued to request the information it sought in the February 9 letter and the Respondent continued to adhere to its position.

Approximately 8 months later, by letter dated February 20, 2002, the Union made the information request that is the subject of the General Counsel's complaint. The Union stated in this letter that it had filed a formal safety complaint with the California Public Utilities Commission (CPUC) concerning incomplete Maximo backlog orders and deleted Maximo orders. The Union also stated that the CPUC had informed it that Maximo orders could not be deleted, but were merely "cancelled" and still available in the system. Therefore, the Union requested copies of all cancelled Maximo orders for transmission and storage for the last 2 years in order to "intelligently represent the members of the Union before the Commission." Approximately 1 week later, the Respondent notified the Union that because the requested information did not relate to a grievance or to general negotiations, the Respondent had no obligation to provide it.[6]

B. Issue

The parties stipulated that the central issue presented is "[w]hether the Respondent, by its continued refusal since February 27, 2002, to provide copies of all cancelled Maximo orders for Transmission and Storage from January 1, 2000 to the present, violates Section 8(a)(1) and (5) of the [Act]."

C. Contentions of the Parties

The General Counsel asserts that the Union's "February 20, 2002, renewed request was for cancelled work orders that detail and quantify the amount of unit work that is being left undone." According to the General Counsel, the information requested, as stated in the Union's 2001 letters, would have enabled the Union to "intelligently determine the effect of the cancelled work orders, including the effect on the safety of its members." Thus, the General Counsel contends that the Respondent's failure and refusal to provide information relevant to the Union's duties as the recognized collective-bargaining representative of the unit employees "constitutes a blatant violation" of Section 8(a)(5) and (1) of the Act.

The Respondent contends that, on February 20, 2002, the Union's sole stated reason for the requested information was to assist the Union in addressing a complaint before the CPUC. The Union, in its 2002 request, made no reference to its earlier requests for information about Maximo orders. According to the Respondent, because the requested information was going to be used for the purpose of pursuing a complaint with the CPUC, a third party, it was under no obligation to provide the Union with the requested documents. See *WXON-TV, Inc.*, 289 NLRB 615, 617–618 (1988), enfd. 876 F.2d 105 (6th Cir. 1989).

D. Discussion

"Under the National Labor Relations Act, '[a]n employer has a duty to furnish requested information to a union which is the collective-bargaining representative of the employees if the requested information is relevant and reasonably necessary to the union's performance of its responsibilities.'" *LBT, Inc.*, 339 NLRB No. 72, slip op. at 2 (2003) (quoting *Allied Mechanical Services*, 332 NLRB 1600, 1601 (2001)). The responsibilities referred to are, once again, a union's responsibilities as bargaining representative for employees under the Act. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967). The standard for relevancy is a liberal, "discovery-type standard." Id. Where a union requests information concerning the terms and conditions of employment of bargaining unit employees, that information is "presumptively relevant" to the union's proper performance of its collective-bargaining duties. The rationale for this presumption is that such information is at the "core of the employer-employee relationship." *LBT, Inc.*, supra at slip op. 2. However, "when a union requests information which is not ordinarily relevant to its performance as bargaining representative, but which is alleged to have become so because of peculiar circumstances, the union has the burden of proving relevance before the employer must comply." *NLRB v. George Koch Sons, Inc.*, 950 F.2d 1324, 1331 (7th Cir. 1991); *Prudential Insurance Co. of America v. NLRB*, 412 F.2d 77, 84 (2d Cir. 1969).

We find that the information requested by the Union in 2002 was not presumptively relevant to the Union's performance of its collective-bargaining duties. We further find that the Union has failed to meet its burden of showing that there are "peculiar circumstances," which make the requested information relevant to its role as collective-bargaining representative. *NLRB v. George Koch Sons, Inc.*, supra.

In its February 20, 2002 letter to the Respondent, the Union simply stated that it had filed "a formal safety complaint" with the CPUC concerning "incomplete Maximo Backlog orders and deleted Maximo orders," and that it needed the Maximo orders to "intelligently represent" its members before the CPUC. Contrary to the dissent, the mere mention of the word "safety" is not sufficient to warrant a conclusion that the requested information is presumptively relevant for purposes of collective bargaining. The sole reason offered by the Union

[6] The parties stipulated that "[t]o date, the Union has not filed a grievance in relation to the information request[ed]."

for seeking the information was to support its complaint before the CPUC. The Union's letter made no reference whatsoever to the Union's earlier requests for information regarding a potential grievance against the Respondent. Nor does the letter in any other way suggest a connection between the request for information and the Union's collective-bargaining relationship with the Respondent. Instead, the Union's request, on its face, relates solely to an action outside the collective-bargaining context—a complaint filed with a State agency.

Our colleague asserts that the information concerns the safety of employees, and that this is sufficient to show that the information is presumptively relevant. However, the issue of relevance, whether presumptive or not, is whether information is relevant to the collective-bargaining relationship. Thus, if safety information is sought for a grievance or for bargaining or for contract administration, it may well be presumptively relevant. However, the information sought here was for a matter before a state agency. The Union was essentially seeking discovery before that agency. The Respondent, in denying the information on February 27, relied on the fact that the information was not related to a grievance or negotiation. The Union gave no response to this valid point.

The dissent contends that because an earlier request for information, on June 28, referenced a threat to file complaints with the NLRB and the CPUC, it is clear that the instant request was relevant to the investigation of a grievance. However, the June 28 letter was written at a time when the Union was considering the filing of a grievance, and thus the Union could go to the NLRB, and perhaps the CPUC, to obtain the information. However, as discussed above, by the time of the letter of February 20, 2002, the Union was not seeking information relating to a possible grievance. Accordingly, the instant information request made no reference whatsoever to the investigation of a grievance. Thus, the Respondent could reasonably believe that the information was now being requested *only* for the purpose of seeking discovery before the CPUC.

Nor does our dissenting colleague's additional argument—that the Union's 2002 information request was an attempt to administer the collective-bargaining agreement—establish the relevance of the Union's request. The dissent finds, inter alia, that by requesting the Maximo orders for the purpose of representing its members before the CPUC, the Union was attempting to "administer and police" section 2.5(c) of the parties' collective-bargaining agreement.[7] However, the Union did not assert a link between the CPUC proceeding and section 2.5(c) of the collective-bargaining agreement. The Union's 2002 request is silent with respect to section 2.5(c). Rather, the request clearly and unambiguously asserts that the information is desired for the purpose of pursuing a complaint before the CPUC. There was no suggestion of an attempt to enforce section 2.5(c), or any other section of the collective-bargaining agreement. To the contrary, having only referenced the CPUC proceeding in its request, the Union clearly conveyed that the information was requested only for that limited purpose. The dissent also states that there was no need to reference section 2.5(c) of the collective-bargaining agreement because the Union had informed the Respondent that "it was appearing before the CPUC in its representational capacity." Even assuming the Union's appearance before the CPUC was in a representational capacity, this fact would not change the result herein. A union, in a representative capacity, can appear before State tribunals. The evidence here shows that the Union was exploring this avenue. The evidence fails to show that the information was being sought for bargaining, for administration of any part of the contract, or for any other purpose relevant to the collective-bargaining relationship. At best, the dissent is engaging in mere speculation by concluding that the Union requested the information in order to effectively administer the parties' collective-bargaining agreement. Speculation does not establish relevance.

Further, the General Counsel did not otherwise establish the relevance of the information the Union sought in 2002. In this connection, the General Counsel's reliance on the Union's 2001 information requests is misplaced. As discussed earlier, there is nothing in the 2002 request that in any way refers to the 2001 requests. Therefore, the 2002 request must be evaluated on its own terms, and, for the reasons stated above, the relevancy of that request has not been shown. In these circumstances, to rely on the 2001 request to establish the relevancy that is lacking with respect to the 2002 request would be to give independent and controlling weight to events occurring more than 6 months prior to the service of the charge in contravention of Section 10(b) of the Act. As the Supreme Court stated in *Local Lodge 1424 v. NLRB*, 362 U.S. 411, 422 (1960), "a finding of a violation which is inescapably grounded in events predating the limitations

[7] Sec. 2.5(c) of the parties' 2002 collective-bargaining agreement provides: "The Union and the Company agree to cooperate in maintaining safe working conditions. No employee shall be required to work under conditions or operate equipment which does not meet the requirements of the lawful orders of the State of California pertaining to employee safety. . . ."

period is directly at odds with purposes of the Section 10(b) proviso." (Emphasis added.)

We agree that events outside the 10(b) period can be used to shed light on critical events within the 10(b) period. However, in this case, the evidence within the 10(b) period affirmatively shows that the Union opted for State relief. There is no suggestion that the Union was seeking state relief *and* grievance relief.

Finally, we find instructive the Board's decision in *WXON-TV, Inc.*, 289 NLRB 615 (1988), enfd. 876 F.2d 105 (6th Cir. 1989). There, the Board dismissed the allegation that the respondent violated Section 8(a)(5) by refusing to provide the union with information concerning, inter alia, the discharges of unit employees. The Board observed that the information request was made on the same day that the union filed unfair labor practice charges against the respondent alleging, inter alia, that the discharges violated the Act. In these circumstances, the Board concluded that the union elected to pursue the resolution of the matters sought in its information request through the Board's unfair labor practice procedures, rather than through the collective-bargaining process. The Board stated:

> Further, apart from the information request itself, there is no evidence that the Union initiated any contact whatsoever with the Respondent in any bargaining context regarding the matters contained in the information request and the unfair labor practice charge. Thus, it is evident that the Union chose to prosecute these matters through the Board's unfair labor practice procedures rather than to bargain with the Respondent.

WXON-TV, Inc., supra at 617.

Here, too, there is no evidence that, within the 10(b) period, the Union initiated any contact with the Respondent in any bargaining context regarding the matters contained in the information request. To the contrary, the Union's own letter shows that it was requesting the information in question in order to represent unit employees before the CPUC. It is clear that the Union here, like the Union in W*XON-TV, Inc.*, supra, requested information for the purpose of pursuing a claim before a third party and not for the purpose of collective bargaining.

In contending that the Respondent is obligated to furnish the requested information to the Union, the dissent relies on an erroneous premise. Suggesting that the Union "resorted" to the state commission after making several "fruitless" requests to obtain this information from the Respondent, the dissent finds that the Respondent engaged in a "shameful course of conduct" to block the Union's "every attempt" to obtain certain requested information. Lost in all of this hyperbole, however, is the fact that the Respondent's prior refusals to furnish information are simply not at issue in this case. There is no complaint allegation as to this prior conduct. The absence is for good reason—the events occurred outside of the 10(b) period. Thus, there is no basis on this record to deem the prior conduct lawful, unlawful, or "shameful." These questions are not before the Board, and are simply irrelevant to the issue presented in this case. Indeed, even assuming that this prior conduct would have been found unlawful had it been the subject of a timely alleged complaint, this fact would not provide a sufficient basis to find that the instant allegation has merit. Thus, while our dissenting colleague may be personally appalled at certain conduct that is not the subject of a complaint allegation, his feelings can provide no legal justification for finding that the alleged refusal to furnish information was unlawful.

Finally, even assuming that the information was presumptively relevant, the presumption has been rebutted. The Respondent has affirmatively shown that the information was not relevant to any grievance or bargaining purpose.

In sum, we find that the General Counsel has not demonstrated the relevancy of the information requested in the Union's February 20, 2002 letter to the Respondent to the Union's duties and responsibilities as collective–bargaining representative under the Act. Instead, we find that the Union's request for Maximo orders was in furtherance of its pursuit of a safety complaint before a third party, the CPUC. Therefore, the Act does not impose a requirement on the Respondent to provide the Union with the documents requested. This is not to say that the requested information is irrelevant to the proceedings initiated by the Union before the CPUC. We, of course, do not reach or consider that issue or whether State law makes such information available to the Union or the CPUC by compulsory process. The requested information is not, however, available to the Union through the Board.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate Section 8(a)(5) of the Act by failing to provide the Union with the information requested on February 20, 2002.

ORDER

The complaint is dismissed.

Dated, Washington, D.C. July 29, 2004

Robert J. Battista, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting.

Safety has been historically a term and condition of employment over which an employer is required to bargain.[1] Therefore, information regarding safety is presumptively relevant to a union's role as collective-bargaining representative.[2] In this case, the Union requested from the Respondent information relating to the *safety* of represented employees. Clearly, the Respondent was obligated to provide this information. The majority nevertheless finds that the requested information was not presumptively relevant because it related to a safety complaint the Union filed with a state regulatory commission. Never mind that the requested information concerned the safety of the Respondent's employees. Never mind that the Union resorted to the state commission only after nearly a year of fruitless requests for the information from the Respondent. And never mind that the Union also needed the information to investigate a possible class-action grievance.

The stipulated record in this case presents a shameful course of conduct where an employer blocked a union's every attempt to get information necessary to protect the safety of the employees it represents. Yet, the majority effectively condones this conduct by a hypertechnical reading of the information request and by refusing to consider the events preceding the request. I dissent.

Background

The Union and the Respondent have been parties to a series of collective-bargaining agreements since 1970. The most recent collective-bargaining agreement was entered into on April 1, 2002, and will expire on March 31, 2005. Section 2.5(c) of the 2002 agreement reads in pertinent part:

> The Union and the Company agree to cooperate in maintaining safe working conditions. No employee shall be required to work under conditions or operate equipment which does not meet the requirements of the lawful orders of the State of California pertaining to employee safety. . . .

A brief chronology of the parties' correspondence concerning the Union's information requests provides context to the underlying issue:

> February 9, 2001[3]—The Union sent the Respondent a letter stating that it was investigating a class action grievance about work not being performed throughout Transmission and Storage which could "impact employee safety." The Union requested the most recent "Overdue Report" and "Backlog Report" for *all work units* in Transmission and Storage. The Union also requested "a list or copies of all Maximo orders that have been closed, deleted and/or removed from the Maximo Backlog without all the work having been completed by represented employees."[4]
>
> February 23—The Respondent acknowledged receipt of the Union's February 9 request and asked for the Union to provide it with "specific employee safety concerns as they relate to these reports."
>
> February 26—The Union forwarded a copy of its February 9 request and asked that the Respondent "[p]lease respond without further delay."
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> June 8—The Union wrote the Respondent stating, inter alia, that its February 9 letter explained "that safety equipment at Goleta was 183 days past due for inspection." Furthermore, the Union noted that it "is entitled to information about represented employees' workload, whether it be in 'backlog' or in 'deleted' backlog."
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> June 25—The Respondent acknowledged receipt of the Union's June 8 letter and requested that the Union provide it with "specific concerns as they relate to these reports so [that the Respondent] can determine whether or not there is relevance to" the request.
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> June 28—The Union reiterated what was stated in its February 9 letter to the Respondent, and further explained that "the postponement of work tied to safety systems (as well as simply not doing the work – as deleted backlogs will show) is a concern that everyone should share." The Union further asserted that if the Respondent "continued to delay [the Union's] receipt of this material," the Union would "file appropriate complaints with the National Labor Relations Board and the California Public Utilities Commission's Safety Branch."

Having failed to receive the requested information from the Respondent, the Union filed a formal safety

[1] E.g., *Gulf Power Co.*, 156 NLRB 622, 625 (1966), enfd. 384 F.2d 822 (5th Cir. 1967).

[2] E.g., *Goodyear Atomic Corp.*, 266 NLRB 890, 891 (1983), enfd. 738 F.2d 155 (6th Cir. 1984).

[3] All dates are in 2001 unless otherwise noted.

[4] According to the Union's unfair labor practice charge, "Maximo" is a work order tracking system.

complaint with the California Public Utilities Commission[5] (CPUC) regarding incomplete Maximo backlog orders and deleted Maximo orders. By letter dated February 20, 2002, the Union wrote the Respondent that it had learned from the CPUC that Maximo orders were never "deleted" from the system, but were merely "cancelled" and thus still remained in the system. The Union requested that the Respondent provide it with "copies of all cancelled Maximo orders . . . for the last two years" so that the Union could "intelligently represent the members of the Union before the Commission." By letter dated February 27, 2002, the Respondent stated that it was under no obligation to provide the requested information because it had no relation to a grievance or to general negotiations.

Analysis

Pursuant to Section 8(a)(5) of the Act, an employer has an obligation to provide requested information needed by the bargaining representative of its employees for the effective performance of the representative's duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). Where the requested information concerns the terms and conditions of employment of bargaining unit employees, the information is presumptively relevant, and the employer has the burden of proving lack of relevance. *Contract Carriers Corp.*, 339 NLRB No. 103, slip op. at 8 (2003) (citing *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989), enfd. 147 LRRM 2662 (9th Cir. 1990)). The health and safety of employees are terms and conditions of employment, and thus information concerning these matters is presumptively relevant. *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 29 (1982), enfd. sub nom. *Oil, Chemical & Atomic Workers Local 6–418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983).

In light of the foregoing legal principles, the requested information concerned unit employees' terms and conditions of employment, and thus was presumptively relevant. The Respondent has not rebutted the presumption of relevance. Therefore, the Respondent violated Section 8(a)(5) of the Act by not providing the requested information to the Union.

The Union's February 20, 2002 information request, on its face, establishes the presumptive relevance of the requested documents. That request stated:

> As you are aware, the Union has filed a *formal safety complaint* with the California Public Utilities Commission Safety Branch about incomplete Maximo Backlog orders and deleted Maximo orders . . . . In order for me to intelligently represent the members of the Union before the Commission I will need to see copies of these "cancelled" orders. Therefore, please supply me with copies of all cancelled Maximo orders for Transmission and Storage for the last two years. [Emphasis added].

The Union's letter plainly identified the requested information as related to the safety of represented employees. Therefore, the information sought was presumptively relevant. *Allied Mechanical Services*, 332 NLRB 1600, 1612 (2001); *Minnesota Mining & Mfg. Co.*, supra. The majority avoids this obvious conclusion by asserting that the mere mention of safety is not enough. But what would have been enough? Surely, a *formal safety complaint* against the Respondent concerning its facility unambiguously asserts that the safety of the Respondent's employees is at issue. For the majority to conclude otherwise merely places form over substance.

The relevancy of the information sought is also shown by the Union's 2001 letters to the Respondent, which "shed light" on the 2002 request. *See Local Lodge No. 1424 v. NLRB*, 362 U.S. 411, 416 (1960) ("[E]arlier events may be utilized to shed light on the true character of matters occurring within the limitations period; and for that purpose Sec. 10(b) ordinarily does not bar such evidentiary use of anterior events."). Those letters indicate that the Union was investigating a grievance and sought the Maximo orders to determine whether the safety of its employees was at risk due to either: (1) certain work not being completed; or (2) the equipment not being inspected. The June 28 letter also asserts that if the Respondent does not provide the safety information, the Union will "file appropriate complaints with the National Labor Relations Board and the California Public Utilities Commission's Safety Branch." This letter, which was the last communication from the Union to the Respondent prior to the Union's February 20, 2002 request, shows that the 2002 request was connected to, and indeed caused by, the Respondent's refusal to provide throughout 2001 the safety information the Union needed in order to decide whether to file a grievance. In sum, the 2001 letters, culminating with the June 28 letter, show that the "true character" of the February 20, 2002 request within the 10(b) period was not simply, as the majority contends, a request for information in connection with a matter before a state agency; it also was a request that was intimately connected to the Union's failed attempts to obtain safety information relevant to the investigation of a grievance.

The Respondent was aware, from the 2001 letters, that the requested Maximo orders concerned a possible safety

[5] The California Public Utilities Commission regulates privately owned electric, telecommunications, natural gas, water, and transportation companies, such as the Respondent. Among other things, the CPUC establishes safety rules and monitors the safety of utility operations. See http://www.cpuc.ca.gov/static/aboutcpuc/index.htm.

grievance, and that the Union was contemplating filing a safety complaint with the CPUC if the Respondent failed to provide it. Thus, when the Union requested those same Maximo orders in connection with a CPUC proceeding in its February 20, 2002 letter, the Respondent well knew the relevance of the requested documents. It nevertheless refused to provide the information in derogation of its statutory obligation to do so.[6]

The refusal to provide presumptively relevant information, standing alone, establishes a violation of Section 8(a)(5). However, the Respondent also had a duty to provide the requested information because of its relevance to an existing contract provision.

A bargaining agent is entitled to information relevant to the performance of its duty to police the administration of an existing agreement. *Contract Carriers Corp.*, supra at slip op. 8; *Western Massachusetts Electric Co*., 234 NLRB 118 (1978). If the requested information relates to an existing contract provision, it thus is "information that is demonstrably necessary to the union if it is to perform its duty to enforce the agreement . . ." *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989), enfd. 147 LRRM 2662 (9th Cir. 1990) (quoting *A.S. Abell Co.*, 230 NLRB 1112–1113 (1977)).

Under section 2.5(c) of the parties' 2002 collective-bargaining agreement, employees have a right not "to work under conditions or operate equipment which does not meet the requirements of lawful orders of the State of California pertaining to employee safety." There is a direct link between the Union's pursuit of the safety claim before the CPUC and section 2.5(c) of the collective-bargaining agreement. By filing the safety complaint with the state commission, the Union sought to administer and police the employees' important contractual right to a working environment that comports with state safety requirements. Because the Respondent is under a duty to provide information that is pertinent to the Union's enforcement of a provision of the collective-bargaining agreement, see *Acme Industrial*, 385 U.S. at 435–438, the Respondent's failure to provide the requested information violated Section 8(a)(5) of the Act.

[6] The majority excuses this misconduct because the Union's February 20, 2002 letter did not make express reference to the Union's 2001 attempts to obtain safety information related to a possible grievance. Again, this approach places form over substance.

The majority asserts that the Union's 2002 information request made no "suggestion of an attempt to enforce section 2.5(c), or any other section of the collective-bargaining agreement." However, the Union pursued the safety complaint with the CPUC on the basis of its role as exclusive collective-bargaining representative charged with the responsibility of protecting the employees contractual right to safe working conditions. Further, the Union clearly informed the Respondent that it was appearing before the CPUC in its representational capacity. Thus, there was no need for the Union to specifically reference the collective bargaining in its 2002 information request.

The majority claims that the information was not requested for the purposes of collective bargaining. The majority is incorrect. Thus, under either theory discussed above, it is obvious that the Union was seeking information that will enable it to properly perform its duties as collective-bargaining representative.[7]

CONCLUSION

For nearly a year, the Respondent placed obstacles in the Union's path to gaining presumptively relevant safety information and to vigorously protecting the rights of the employees it represents. The Board's decision today effectively encourages such stalling techniques and adds yet another barrier. The information should have been provided long ago. By failing to do so, the Respondent violated Section 8(a)(5) and (1) of the Act, and it should now be ordered to provide the Union with the requested information.

Dated, Washington, D.C. July 29, 2004

Dennis P. Walsh, Member

NATIONAL LABOR RELATIONS BOARD

[7] The majority relies on *WXON-TV, Inc.*, 289 NLRB 615, 617-618 (1988), enfd. 876 F.2d 105 (6th Cir. 1989). That case is totally inapposite, as it involved a union attempt to circumvent the Board's rule against prehearing discovery. See *Union-Tribune Publishing Co*., 307 NLRB 25, 26 (1992) (explaining rationale of *WXON-TV, Inc.*), enfd. 1 F.3d 486 (7th Cir. 1993).